Supreme Court, U.S.
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No. 99- 858

IN THE

Supreme Court of the United States

CITY OF ANAHEIM,

Petitioner,

v.

CALIFORNIA CREDIT UNION LEAGUE AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT CALIFORNIA CREDIT UNION LEAGUE

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QUESTION PRESENTED

Whether petitioner City of Anaheim's levying its transient occupancy tax on federal credit union employees staying in local hotels while on the business of the federal credit union employer violates 12 U.S.C. § 1768 provision of tax immunity to federal credit unions.

PARTIES TO THE PROCEEDINGS

Petitioner is the City of Anaheim ("Anaheim"). The Respondents are the California Credit Union League (the "League"), and the United States of America.[1]

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1. Amici curiae briefs were filed in the court of appeals below. The United States Government filed a brief in support of respondent California Credit Union League's position. The Credit Union National Association, Inc., joined by the Hawaii Credit Union League, National Association of Federal Credit Unions also filed briefs in support of the League. The National Institute of Municipal Law Officers filed an amicus brief in support of petitioner City of Anaheim.

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Respondent California Credit Union League requests that the Court deny the petition for writ of certiorari seeking review of an opinion of the Court of Appeals of the Ninth Circuit Court of Appeals. The Ninth Circuit decision is reported at 95 F.3d 30 and subsequently at 190 F.3d 997 (for the convenience of the Court, all citations to the Ninth Circuit opinions will be to the opinions attached as Exhibit A to the Petition). The United States District Court for the Central District of California's order denying petitioner City of Anaheim's Motion to Dismiss and granting respondent California Credit Union League's Motion for Summary Judgment (dated November 22, 1994) is attached to the Petition as Appendix B. The Judgment of the District Court (dated January 9, 1995) is attached to the Petition as Appendix C.

STATEMENT OF JURISDICTION

The Court of Appeals initially entered its judgment on September 9, 1996. Anaheim did not petition the Ninth Circuit for rehearing. Anaheim filed a petition for certiorari on December 6, 1996. The City's petition was reviewed and granted by this court at 520 U.S. 1261 (1997) and the matter was remanded to the Ninth Circuit for further proceedings in accordance with this Court's decision in *Arkansas v. Farm Credit Services of Central Arkansas*, 520 U.S. 821 (1997). After further consideration and the addition of the United States as a party plaintiff in the suit, the Ninth Circuit issued a second opinion on September 1, 1999, confirming its earlier ruling on the merits of Anaheim's appeal. Anaheim now petitions this court as it did before, and, as it did in its previous petition, Anaheim invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1).

Anaheim once again appears to seek certiorari in part to have this Court answer practical questions about the legal consequences arising out of the Ninth Circuit decision which were not adjudicated by either the district court or the Court of Appeals. (Petition at 17, 18.) This Court lacks jurisdiction to rule on matters not adjudicated by the courts below.

STATUTES INVOLVED

The controlling statute is 12 U.S.C. § 1768, a section of the Federal Credit Union Act. The applicable provision is as follows:

> The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority, except that any real property and any tangible personal property of such Federal credit unions shall be subject to . . . taxation to the same extent as other similar property is taxed . . .

The statute is set forth in full at Petition Appendix D.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition of the Case Below

This case involves the straight-forward application of the broad tax immunity Congress conferred on federal credit unions through 28 U.S.C. § 1768. The facts are simple and

undisputed. In November 1993, employees of twenty four federal credit unions attended a conference for credit unions held at the Disneyland Hotel in Anaheim, California. It is undisputed that the credit union employees were on credit union business. The rooms at the hotel had been reserved and paid for by the federal credit unions. The employees presented certification of federal credit union tax exempt status. Nevertheless, these federal credit union employees were assessed a 13% transient occupancy tax pursuant to Anaheim Municipal Code Chapter 2.12. The federal credit unions paid the tax under protest.

On September 1, 1994, Respondent California Credit Union League, in its capacity as a trade association representing the interests of constituent federal credit unions, filed a declaratory relief action against the City of Anaheim in the United States District Court for the Central District of California, *California Credit Union League v. City of Anaheim*, Case No. CV 94-5991 ER (GHx). The lawsuit alleged that by levying its transient occupancy tax on federal credit union employees on federal credit union business, the defendant City of Anaheim had violated the tax immunity provision of the Federal Credit Union Act, 12 U.S.C. § 1768. By its complaint, the League sought a declaratory judgment that federal credit unions are not liable for hotel occupancy taxes levied by the City of Anaheim in the limited instance where (1) the hotel rooms triggering the occupancy tax have been contracted for by the federal credit union and (2) the rooms have been paid for directly by the federal credit unions.

Anaheim filed a motion to dismiss for failure to state a claim upon which relief can be granted. The League opposed Anaheim's motion and also filed a concurrent motion for summary judgment based on undisputed facts. A hearing was

held on both Anaheim's motion to dismiss and the League's motion for summary judgment. Both parties stipulated that disposition by summary adjudication was appropriate. At the district court proceedings, Anaheim conceded that federal credit unions are instrumentalities of the federal government. (*See* Petitioner Appendix A at 3 n.1.)

At the hearing, the district court, the Honorable Edward Rafeedie presiding, announced its tentative ruling to deny Anaheim's motion to dismiss and grant the League's motion for summary judgment. The court's analysis was straightforward: employees of federal credit unions on credit union business stand in the shoes of their federal credit union employers and therefore the levy of an occupancy tax on those employees violated 12 U.S.C. § 1768. As the reporter's transcript of the hearing (attached to the Petition as Appendix F) shows, Anaheim's primary objection to the court's tentative ruling was practical, *not* legal. Upon announcing its tentative ruling, the court heard the City's argument:

> Do you wish to be heard for the City?
>
> MR. JOHNSON: Yes, your Honor.
>
> I think one of the things that needs to be addressed if the court is going to grant the motion for summary judgment, is what proof is the hotel going to need to know that this employee is on Federal Credit Union business? Some of the exhibits attached to the complaint were a little contradictory.

> THE COURT: That isn't what you have said in your papers. In your papers you said that the entity itself is exempt, not the employee. Now you are trying to change your position here a little bit.
>
> MR. JOHNSON: **What I'm concerned about, your Honor, is implementation of the court's ruling**. How is the hotel going to know when they are looking at a person whether they are there on credit union's business or they are there on personal business?
>
> THE COURT: They have the right to demand proof.
>
> MR. JOHNSON: Okay.

Reporter's Transcript, Petition Appendix F at 5 (emphasis added). Hearing nothing from Anaheim which changed the court's analysis, the court adopted its tentative as its ruling and judgment was entered in favor of the League. (Petition Appendix C.)

Anaheim appealed the judgment to the Ninth Circuit Court of Appeals arguing that the incidence of the tax fell on the employee, not the federal credit union and therefore the tax did not violate 12 U.S.C. § 1768. The appeal was fully briefed by both parties and also by *amici curiae* for both parties. The United States Government filed a brief in support of the League's position.

The United States of America was joined by the Credit Union National Association, Inc., the Hawaii Credit Union League and the National Association of Federal Credit

Unions in filing an amicus brief in support of the League. The National Institute of Municipal Law Officers filed an amicus brief in support of Anaheim.

The Ninth Circuit affirmed the summary judgment. The Ninth Circuit's decision provides a straight-forward, step-by-step analysis supporting its holding. Beginning with the express terms of 12 U.S.C. § 1768, the court noted the broad tax immunity the Congress conferred on federal credit unions. Petition Appendix A at 2-3. The court then cited to this Court's ruling (in *United States v. New Mexico*, 455 U.S. 720 (1982)) that in order to enjoy the benefit of federal tax immunity a private taxpayer must stand in the shoes of the government. Petition Appendix A at 4-5. The court then reasoned that:

> The Court's analysis in *New Mexico* compels the conclusion that federal employees are constituent parts of the United States, at least with respect to their professional duties. *See id.* When acting on behalf of the federal government, the congruence between the professional interests of the employee and those of the government is complete.

From this analysis, the court then concluded:

> Because the federal credit unions' employees were attending to credit union business while staying at the Disneyland Hotel in Anaheim, they were "constituent parts" of the credit union and immune from Anaheim's transient occupancy tax under Section 1768.

Petition Appendix A at 5. Anaheim did not seek rehearing or clarification from the Court of Appeals. It did, however,

file a petition for certiorari. Certiorari was granted (520 U.S. 1261), the Ninth Circuit's initial opinion was vacated, and the case was remanded to the Ninth Circuit for further proceedings in accordance with *Arkansas v. Farm Credit Services of Central Arkansas*, 520 U.S. 821 (1997), relating to the issue of the necessity of the United States appearing as a party plaintiff in actions challenging the imposition of taxes upon federal instrumentalities by state and local governments. Upon remand, the Ninth Circuit granted a joint motion made by the California Credit Union League and the United States to add the United States as a party plaintiff under Federal Rules of Civil Procedure, Rule 21. Additionally, the court stated that it would "affirm the district court's award of summary judgment in favor of the League for the reasons set forth in our prior opinion" (Petition Appendix A15). Anaheim has now filed a new petition for certiorari substantially identical to its prior petition.

B. Corrections of Misstatements in the Petition

Pursuant to United States Supreme Court Rule 15.1, respondent brings the following misstatements contained in the petition to the Court's attention.

Petitioner Anaheim misstates the scope of the Ninth Circuit's decision as going to constitutionality[2], as opposed to statutory construction. It is, however, unambiguous on the face of the Ninth Circuit's decision that the decision is

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2. Anaheim states: "[W]hether, the City of Anaheim can constitutionally levy its TOT tax upon employees of federal credit unions (or federal employees), when the employee is on employer business (as evidenced by an exemption form) and the employer pays the hotel directly through an employer check." (Petition, p. i)

based on statute (12 U.S.C. § 1768), *not* the Constitution. Indeed, the Ninth Circuit specifically says so:

> Independent of the protection afforded by Section 1768, courts have generally considered federal credit unions to be instrumentalities of the federal government and thus immune from state taxation under the supremacy clause. [Citations omitted.] Relying on our decision in *Jesinger v. Nevada Federal Credit Union*, 24 F.3d 1127, 1132 (9th Cir. 1994), the National Institute of Municipal Officers ("cities") argues, in an amicus brief, that federal credit unions are not instrumentalities of the United States. [Footnote omitted.] *Because courts have considered the immunity afforded by Section 1768 to be coterminous with that afforded by the supremacy clause, we do not address the cities' argument.* [Citations omitted.] If credit unions would be immune from local taxation were they to be considered an instrument of the federal government, then *regardless of the instrumentality question they are immune from local taxation under Section 1768. See Michigan*, 801 F.2d at 807.

(Petition Appendix A at 3, emphasis added.)

Anaheim also misstates the Ninth Circuit's holding: "The Ninth Circuit holds, in effect, that employees of federal instrumentalities are federal instrumentalities themselves." To the contrary, in its decision, the Ninth Circuit merely held that *when doing the business of the credit union*, credit union employees stand in the place of the credit union for purposes of assessing their entitlement to tax immunity under the statute:

> The Court's analysis in [*United States v.*] *New Mexico* [, 455 U.S. 720, 738 (1982)] compels the conclusion that federal employees are constituent parts of the United States, *at least with respect to their professional duties. See id. When acting on behalf of the federal government, the congruence between the professional interests of the employee and those of the government is complete.*

(Petitioner's Appendix A at 5, emphasis added.)

Anaheim also misstates the scope of issues adjudicated at the District Court and Court of Appeals levels. Anaheim states:

> The issue of whether the court has to make a distinction if the employee pays for the hotel room with a private check was raised below.

Petition, p. 20. As the district court's order (Petition Appendix B) and judgment (Petition Appendix C) and the court of appeals decisions (Petition Appendix A) demonstrate, this issue manifestly was not adjudicated below. It was "raised" only in the sense of colloquy during the district court's hearing. (Petition Appendix F.) This issue is not ripe for review by this Court as suggested by Anaheim. Anaheim's "citations" to *United States v. Montgomery County*, 761 F.2d 998 (4th Cir. 1985) are misleading to the extent that they substitute the words "federal credit union" for the original wording in the court's opinion (at pp. 6,7, and 14 of the Petition).

REASONS FOR DENYING THE WRIT

This case is about a municipality so intent on maintaining its taxing authority that it seeks to circumvent plain statutory tax immunity for federal credit unions by tortured semantics. By its instant petition, Anaheim refuses to heed the sound analysis and unambiguous decisions issued by both the district court and court of appeal which flatly rejected its strained argument. Instead, money is *the* issue.[3] Indeed, it is surprising how unguardedly forthright Anaheim is in admitting its prioritization of revenue collecting over compliance with Section 1768:

> If the hotel (serving as the statutory tax-collector) hands over the correct sum due the City of Anaheim, the City is not going to object to the hotel's accepting payment from the federal credit union employer.

(Petition at 13.)

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3. This could not be more clear. Anaheim proclaims:

> The practical effect of the Ninth Circuit's opinion is to permit all federal credit union and federal employees to stay in hotels in any city without paying a TOT [transient occupancy] tax while they are on business. Thousands of dollars in TOT tax revenue will be lost annually to the City of Anaheim and other cities nationwide if the Ninth Circuit decision stands. (Petition at 6.)

However, Anaheim is mistaken; it is not the Ninth Circuit decision which circumscribes its ability to tax federal credit unions, but rather Congress in enacting 12 U.S.C. § 1768.

Anaheim concedes — as it must — that under Section 1768 it cannot tax a federal credit union. Not able to tax federal credit unions directly, it then tries to make an end run around the plain language of Section 1768. Anaheim argues that it is the *employee* of the federal credit union, not the federal credit union, who is taxed. Anaheim argues that because it is the employee and not the federal credit union who sleeps in the hotel, the occupancy tax does not violate Section 1768. This argument is remarkable. Of course a federal credit union (like a corporation or any other nonnatural person) can act *only* through its employees and agents. Thus, the district court and Ninth Circuit in this case (and this Court in other cases) were absolutely correct in holding that when doing the government's business, the government employee stands in the government's shoes. How could it be otherwise?

To accept Anaheim's strained logic would mean that any taxing authority could get around the Section 1768 tax immunity by simply wording the tax ordinance[4] or statute such that it was the employee, rather than the federal credit union, that was taxed. This plainly is not what Congress intended. When Congress enacted Section 1768, it intended for federal credit unions to be free from taxation, both legally and practically. The Ninth Circuit Court of Appeal's

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4. Anaheim argues that the Ninth Circuit's decision here "is contrary to the plain language of the Anaheim Municipal Code." (Petition, p. 7.) The United States Congress has legislated that cities, states and other local taxing authorities *cannot* tax federal credit unions. It is therefore patently beside the point whether the Ninth Circuit's decision "is contrary to" the City's ordinance. What matters is that application of the ordinance to the federal credit union violates federal statute. *See United States v. State of Michigan*, 851 F.2d 803, 807 (6th Cir. 1988).

affirmance of the District Court's award of summary judgment is therefore a straightforward application of the statute, is not in conflict with this Court's authority or that of any other Circuit and does not require review by this Court.[5]

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5. Rule 10 of the Supreme Court Rules sets forth the Court's guidelines for deciding petitions for writs of certiorari. In pertinent part, Rule 10 provides:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." Rule 10, Rules of the Supreme Court. In addition to this general statement, Rule 10 also sets forth criteria which "indicate the character of the reasons the court considers:
>
> (a) A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or as so far departed from the accepted and usual course of judicial proceedings, or sanctions such a departure by a lower court, as to call for an exercise of this court's supervisory power; . . .
>
> (c) A state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this court, or has decided an important federal question in a way that conflicts with relevant decisions of this court.

Rule 10.

Anaheim, in its Petition, patently fails to establish *any* of these criteria demonstrating a "*compelling*" need for this Court's review.

A. The Ninth Circuit Decision Holding That The City Of Anaheim's Tax On Federal Credit Union Employees In The Course Of Their Business For The Credit Union Violates 12 U.S.C § 1768 Is A Routine Application Of The Statute And This Court's Authority.

In its decision, the Ninth Circuit merely and routinely interpreted the scope of the tax immunity conferred on federal credit unions by the Congress under 12 U.S.C. § 1768. *See generally* Petition Appendix A. Although Anaheim tries to add a Constitutional dimension to the Ninth Circuit decision, it simply is not there. *See* discussion at Misstatements section *infra*. The Circuit Court's analysis is a well reasoned interpretation of Section 1768 which accurately applies principles and precedents established by this Court. There is *no* need, much less a compelling need, for review by this Court.

As part of the Federal Credit Union Act, Congress enacted 12 U.S.C. § 1768. And, as the Ninth Circuit states in its decision,

> 12 U.S.C. § 1768 confers upon federal credit unions broad immunity from federal, state, and local taxation:
>
> The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority, except that

> any real property and any tangible personal property of such Federal credit unions shall be subject to . . . taxation to the same extent as other similar property is taxed.

(Petitioner Appendix A at 2-3.) The statute is thus express and unambiguous that federal credit unions are immune from *all* taxation "except that any real property and any tangible personal property of such Federal credit unions shall be subject to . . . taxation to the same extent as other similar property is taxed." Accordingly, Anaheim does not — cannot — dispute that federal credit unions are exempt from its transient occupancy tax. But in its apparent desperation to collect the expected "thousands of dollars in TOT tax revenue . . ." per year (Petition at 6), Anaheim constructs a legal fiction — nay, a semantic fiction — that if it taxes the *employees* of the federal credit union while they are conducting the credit union's business, they have somehow jumped outside the reach of Section 1768 immunity. But such semantic gymnastics cannot frustrate the intent of Congress to immunize federal credit unions from local transient occupancy taxes.

And so held the Ninth Circuit. In rejecting Anaheim's argument that because it is the employee who slept in the hotel room, it was the employee *personally* who was taxed rather than the employee doing the federal credit union's business and therefore standing in the credit union's shoes (or in this case, lying in the credit union's bed), the Ninth Circuit utilized this Court's decision in *United States v. New Mexico*, 455 U.S. 720 (1982). Petition Appendix A at 4.

In *New Mexico*, this Court considered the propriety of taxing contractors providing research and other services

involving nuclear energy to the federal government. There the Court specifically discussed the distinction between the government's employees and agents, on the one hand, and independent contractors with the government on the other. *Id.* at 739-740. And the basis of that distinction was precisely that when a government employee is doing the government's business, there is an identity between the government and the employee; no separation exists. However, with an independent contractor, even when the contractor is doing services for the government, the interests never merge and the contractor is *always* separate and distinct from the government. *Id.* This Court's distinction between the identity of interests between an employee and the federal employer and the separation of interests between a federal agency and its independent contractor is unambiguous:

> **In contrast to federal employees,** then, Sandia and its fellow contractors cannot be termed "constituent parts" of the Federal Government. It is true, of course, that employees are a special type of agent, and like the contractors here employees are paid for their services. But **the differences between an employee and one of these contractors are crucial.** The congruence of professional interests between the contractors and the Federal Government is not complete; their relationships with the Government have been created for limited and carefully defined purposes. Allowing the States to apply use taxes to such entities does not offend the notion of federal supremacy. (455 U.S. 720, at 740-741, emphasis added).

In accord, see Alabama v. King & Boozer, 314 U.S. 1, 11, 62 S. Ct. 43 (1941) (holding tax was permissible because it fell upon a contractor, rather than a government agent or employee).

The Ninth Circuit's analysis and application of *New Mexico* in its decision here is straightforward:

> In *New Mexico*, the Supreme Court, noting "the confusing nature of our precedents," concluded that the essence of the federal government's tax immunity is a prohibition against states assessing taxes "directly upon the United States." 455 U.S. at 733. Immunity from state or local taxation is only appropriate "when the levy falls on the United States itself, or an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." *Id.* at 735. To avoid paying state or local taxes, "a private taxpayer must actually stand in the Government's shoes." *Id.* at 736 (internal citations omitted). *See also United States v. County of San Diego*, 965 F.2d 691, 697 (9th Cir. 1992) (quoting *New Mexico*).

Petition Appendix A at 4. Thus the Ninth Circuit's analysis and use of this Court's precedent is proper and does not invite, much less require, this Court's review.

Anaheim's reliance on *United States v. County of Fresno*, 429 U.S. 452, 97 S. Ct. 699, 50 L. Ed. 2d 683 (1977), also fails to establish that the Ninth Circuit's decision is

appropriate for review by this Court. In *Fresno*, this Court upheld a state property tax levied against forest rangers for their *personal* possessory interest in their homes, which were located on federal property, even when the government reimbursed the employees for the tax. *Fresno* is inapplicable here because the nature of the interest taxed is fundamentally different. In *Fresno*, the Court approved the tax on the government employee because the tax was of a personal nature, as opposed to an employee carrying out an official government function. *Id.* at 466. The personal nature of the interest was even admitted in the government's complaint:

> The government's complaint in this case alleges that the occupancy of the forest service houses constitutes part of appellant's "compensation" for services performed — thus, conceding that the occupancy is of personal benefit to the employee . . . the forest service itself purports to measure the personal benefit of the occupancy to the employee and collects rent in such amount through deductions from the employees paycheck. Since virtually everyone in this country pays for housing for himself or herself and family, common sense compels the conclusion that the occupancy of the house provided by an employer for the employee's family is a personal financial benefit to the employee.

429 U.S. at 466.

It is well-established that income, or compensation, of government employees is taxable. *See Graves v. New York*, 306 U.S. 466 (1939). Accordingly, contrary to Anaheim's argument, *Fresno* in no way shows that the Ninth Circuit

decision here in any way extends or goes contrary to this Court's precedents. The Petition should be denied.

B. There Is No Conflict With The Fourth Circuit Court Justifying This Court Granting Certiorari.

Anaheim argues that the Ninth Circuit decision here conflicts with the Fourth Circuit opinion in *United States v. Montgomery County*, 761 F.2d 998 (4th Cir. 1985). The City's interpretation is in error. In *Montgomery County*, the Fourth Circuit held that Montgomery County could constitutionally[6] impose a transient occupancy tax on *outpatients* of the National Institute of Health (the "NIH"). *Id.* at 1002. This has nothing to do with whether **employees** of a federal credit union doing credit union business can be lawfully taxed.[7] The decision in *Montgomery County* does not even discuss *employees* of the NIH, much less render a holding concerning employees of a federal instrumentality. And Anaheim admits as much. Consider its characterization of the Fourth Circuit's holding:

> that a county tax on transients renting hotel sleeping accommodations fell on the occupants

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6. Plainly the Ninth Circuit decision cannot conflict with the Fourth Circuit's decision in *Mongtomery County*; the Ninth Circuit interpreted a statute, the Fourth Circuit the U.S. Constitution.

7. Anaheim chastises the Ninth Circuit for not discussing *Montgomery County* (Petition at 6) and characterizes its decision as being "in direct conflict with" the Fourth Circuit decision (Petition at 7). The reason the Ninth Circuit did not discuss *Montgomery County* is plain; it is inapplicable to the analysis. And the Ninth Circuit decision is not "in direct conflict with" *Montgomery County*; it is a wholly different analysis.

> of the sleeping accommodations [*who were outpatients at the National Institutes Of Health ("NIH")*] . . .

(Petition at 11, emphasis added.) But the Ninth Circuit decision does *not* involve guests of a federal instrumentality, it involves employees. The analogous situation to *Montgomery County* would be if the League were seeking tax exempt status for *nonemployee* guest presenters at the credit union conference. Thus, the Ninth Circuit's holding that federal credit unions can occupy rooms as transients through their employees is therefore entirely consistent with the Fourth Circuit's decision in *Montgomery*. There is no conflict justifying, much less compelling, review by this Court.[8]

This Court recently discussed two types of challenges to state and local taxation by the federal government in *Arizona Department of Revenue v. Blaze Construction Co., Inc.*, 119 S. Ct. 957, 526 U.S. 32 (1999). In that case, concerning the assessment of an Arizona transaction privilege tax on a contractor of the Bureau of Indian Affairs, this Court stated:

> These principles control the resolution of this case. Absent a constitutional immunity or congressional exemption, federal law does not

8. Anaheim admits that the Ninth Circuit's decision is in accord with the position of the Comptroller General, 55 Comp. Gen. 1278, 1280-81 (1976). (Petition at 14-15.) Anaheim then tries to distinguish this case depending (again) on the tautological argument that because the federal credit union itself did not sleep in the room, it was the employee personally who was taxed, not the credit union. Again, Anaheim's position would completely eviscerate Section 1768.

> shield Blaze from Arizona's transaction privilege tax (Citations). The incidence of Arizona's transaction privilege tax falls on Blaze, not the Federal Government. Blaze does not argue that it is an agency or instrumentality of the Federal Government, and *New Mexico's* clear rule would have foreclosed any such argument under these circumstances. Nor has Congress exempted these contracts from taxation (Citing *Carson v. Roane-Anderson Co.* 342 U.S. 232, 72 S. Ct. 257 (1952)) 119 S. Ct. 957, 960.

The Fourth Circuit's opinion in *United States v. State of Maryland*, 488 F. Supp. 347 (1980), *aff'd*, 636 F.2d 73, *cert. den.*, 451 U.S. 1017 (1981) illustrates a different analysis predicated upon a statutory claim of tax immunity. In that case, the United States brought suit against the State of Maryland for imposing state taxes upon a member of Congress who maintained a residence in that state in order to carry out his governmental duties. A specific statute (4 U.S.C. § 113) exempted the Congressman from individual state income tax under the circumstances presented. In summarizing its response to the case before it, the court stated:

> Congress is our one and only national legislative body. Surely it is a more important federal instrumentality than any agency or corporation which it creates. Thus the *Graves* holding that employees of a corporation created by Congress as a federal instrumentality are not impliedly immunized by the Constitution itself from the type of Maryland taxation involved herein does not necessarily mean that the Constitution does not

> impliedly immunize a Member of Congress. But since Congress has expressly by the 1977 Act provided its Members with such immunity, the question of whether a Member of Congress enjoys such implied constitutional immunity need not be answered herein.

(488 F. Supp. 347, 359). The present case is nearly identical. Although the federal credit union constituents of Respondent California Credit Union League steadfastly maintain that they are federal instrumentalities pursuant to their creation by federal law, they are nonetheless beneficiaries of a specific federal statute, 12 U.S.C. § 1768, which exempts them from state and local taxation. Thus, for this further reason, The Ninth Circuit's opinion in this matter does not conflict with any decisions of this Court or of any appellate court, including the Fourth District.

C. It Is For The District Courts, Not This Court, Initially To Adjudicate The Application Of The Ninth Circuit Holding Through Specific Cases And Controversies As Required By Article III Of The Constitution.

In a fundamental misapprehension, Anaheim argues that this Court should grant certiorari because otherwise "cities all over the country will face uncertainty in the application of their TOT taxes." Anaheim raises various questions it has concerning the practical effects of the Ninth Circuit's ruling, for example:

> The issue of whether the court has to make a distinction if the employee pays for the hotel room with a private check was raised below. The Ninth Circuit opinion does not directly answer this issue.

(Petition at 20.)

The Ninth Circuit Opinion does in fact answer the relevant question. The rule is: Federal credit union employees on credit union business are entitled to the tax exemption of 12 U.S.C. § 1768. It's that simple.

But more fundamentally, if Anaheim has lingering questions about the legal consequences of the Ninth Circuit decision, it has the options of seeking an advisory opinion of an appropriate administrative agency or instituting a declaratory relief action in *district* court. However, it is utterly plain that the court of appeals (and most certainly this Court) are not authorized by Article III of the Constitution to idly ruminate on the various practical parameters of a particular court decision. Rather, over a dispute such as this, the courts of appeal and this Court have *review* jurisdiction, not original jurisdiction. This Court patently lacks jurisdiction (on this record) to rule on the particular, collateral questions Anaheim raises. Accordingly, these lingering questions not only do not — they cannot — justify granting certiorari. The Petition should be denied.

CONCLUSION

The Ninth Circuit's affirmance of the district court's award of summary judgment here is a routine application of the unambiguous provisions of 12 U.S.C. § 1768. The decision raises no conflict with the Fourth (or any other) Circuit. And while the League agrees with Anaheim that the Ninth Circuit addresses an important taxation issue, the Ninth Circuit's decision soundly resolves the issue with a clear, well reasoned analysis consistent with Congressional intent and existing authority. In short, there is *no* reason for this Court to review the decision. The petition should be denied.

Respectfully submitted,

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